

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS**

In re : Chapter 11  
M.A.S. REALTY CORPORATION : CASE NO. 02-46121-JBR  
DEBTOR :

**ORDER ON EMERGENCY MOTION OF SPECIAL COUNSEL TO EXTEND TIME TO  
FILE NOTICE OF APPEAL**

This matter came before the Court<sup>1</sup> on the Emergency Motion of special Counsel to Extend Time to File Notice of Appeal [docket # 494] and the Opposition of Louis Robin thereto [docket # 495].

1. On June 13, 2005 the Bankruptcy Court entered an order denying the Debtor's Motion for sanctions. The order was docketed on the same day. On June 24, 2005, one day after the deadline for filing a notice of appeal under Fed. R. Bankr. P. 8002(a), the Debtor filed its Notice of Appeal. On July 12, 2005 the Bankruptcy Appellate Panel dismissed the appeal as untimely as the Notice was one day outside of the 10-day period and no motion to extend the time within which to file a notice of appeal had been filed with the Bankruptcy Court.. See BAP No. MW-05-035.

2. On July 14, 2005 the Debtor filed its Emergency Motion. It too is one day late as Fed. R. Bankr. P. 8002(c)(2) provides that an request to extend the time for filing a notice of appeal either must be made within the initial 10-day period for filing a notice of appeal **or** "not later than 20 days after the expiration of the time for filing a notice of

---

<sup>1</sup>The Motion is captioned to the Bankruptcy Appellate Panel but bears the case number assigned to the Chapter 11 case by the Bankruptcy Court. It is the Bankruptcy court which possesses the authority to extend time to file a Notice of Appeal. See Fed. R. Bank. P. 8002(c)(1). In light of the Court's ruling herein, the Court expressly does not need to reach the question of whether it has the authority to grant additional time to file a timely Notice of Appeal after dismissal of the initial appeal by the BAP.

appeal....” If the motion is filed within the latter period, the movant must make a showing of excusable neglect. In short, motions to extend the time to file a notice of appeal brought after the initial 10-day appeal period has lapsed, must be made no later than 30 days after the entry of the order from which an appeal is to be taken. Here the emergency motion was filed 31 days after entry of the June 13, 2005 order and is thus untimely.

3. Because the rule is jurisdictional, the Court cannot extend the time beyond the 30 days as Fed. R. Bankr. P. 9006((b)(3) makes clear. This Court cannot extend the time to file an appeal except as specified provided for in Rule 8002(c). Thus, *In re Jarvis*, 53 F.3d 416 (1st Cir. 1995), is inapplicable and the Debtor’s request for *nunc pro tunc* relief cannot be granted.


4. The failure to file a timely motion for extension is “fatal and precludes any consideration of purported excusable neglect,” *In re Bushnell*, 273 B.R. 359, 363 (Bankr. D. Vt. 2001). The Court notes, however, that even if the emergency motion had been timely, it would fail under the excusable neglect standard. Although the emergency motion alleges “excusable neglect,” it offers no basis for finding excusable neglect. It contains only the bare recitation of the phrase and that is insufficient under *Pioneer Investment Services Co. v. Brunswick Associates, Ltd.*, 507 U.S. 380, 113 S.Ct. 1489, 123 L.Ed.2d 74 (1993).<sup>2</sup>

---

<sup>2</sup>In *Pioneer Investment Services Co.*, the Supreme addressed the question of what constitutes excusable neglect and concluded that “Congress plainly contemplated that the courts would be permitted, where appropriate, to accept late filings caused by inadvertence, mistake, or carelessness, as well as by intervening circumstances beyond the party’s control.” *Id.*, 507 U.S. at 388, 113 S.Ct. at 1495. This language has been widely and correctly held to have fashioned a two-step test to determine whether excusable neglect exists. The first step is a determination of whether “neglect” exists.

For the foregoing reasons, the Emergency Motion of Special Counsel to Extend Time To File a Notice of Appeal is DENIED.

Dated: July 20, 2005

  
Joel B. Rosenthal  
United States Bankruptcy Judge

---

"The ordinary meaning of 'neglect' is 'to give little attention or respect' to a matter, or, closer to the point for our purposes, 'to leave undone or unattended to esp[ecially] through carelessness.' Webster's Ninth New Collegiate Dictionary 791 (1983) (emphasis added)." *Id.* The determination of whether the neglect is "excusable", the second prong of the test, "is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission. These include ... the danger of prejudice to the [non-movant], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether movant acted in good faith." *Id.*, 507 U.S. at 395, 113 S.Ct. at 1498. "Mere inadvertence, ignorance of the rules, or mistakes construing the rules usually do not constitute excusable neglect....Rather, the would-be appellant must demonstrate unique or extraordinary circumstances." *Mirpuri v. ACT Manufacturing, Inc.*, 212 F.3d 624, 631 (1st Cir.2000) (citations omitted). "To find neglect to be excusable, there must be some explanation or reason why it occurred." *In re Nickels Performance systems, Inc.*, 169 B.R. 647, 652 (Bankr. E.D. Tenn. 1994).